

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP896-CR

Cir. Ct. No. 2015CF2512

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL LEE BRAYSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Michael Lee Brayson appeals a judgment of conviction, following a guilty plea, of two counts of misdemeanor battery,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

domestic abuse. Brayson also appeals the postconviction order denying his motion for relief. On appeal, Brayson argues that the domestic abuse modifiers should have been stricken and the surcharges vacated because the record does not establish that Brayson and the victim resided together pursuant to WIS. STAT. §§ 968.075 and 973.055. We affirm.

BACKGROUND

¶2 On June 6, 2015, Brayson was charged with one count of attempted second-degree sexual assault, domestic abuse, one count of second degree sexual assault, domestic abuse, and one count of misdemeanor battery, domestic abuse.

¶3 According to the criminal complaint, on June 2, 2015, Oak Creek police were called to respond to a domestic violence call made by a witness at the Love's Travel Center, a location where a number of semi-trucks park. Officers were notified that the individuals involved were occupants of a D&D Transportation semi-trailer. As the officers were responding to the call, they were notified that the truck left the stop and was heading southbound on Interstate 94. Officers ultimately located the truck and conducted a stop.

¶4 Upon stopping the vehicle, officers spoke to L.A.R. L.A.R. told officers that she and Brayson, her boyfriend who was with her in the truck, were arguing because Brayson wanted money to purchase beer. L.A.R. told police that Brayson was already drunk and wanted to have sex with her. When L.A.R. refused, Brayson became violent and attempted to force oral sex on her. L.A.R. then received a phone call from her employer regarding complaints that Brayson was drunk and being loud. While L.A.R. was speaking with her employer, Brayson again became violent, pulling L.A.R.'s hair, putting his hands around her neck, yelling, and attempting to reach for her phone. Brayson demanded that

L.A.R. drive. She complied. While L.A.R. was driving, Brayson demanded that L.A.R. perform oral sex. L.A.R. refused, telling Brayson that she was driving. Brayson grabbed L.A.R. and placed his hands over her eyes so that she could not see while she was driving. According to the complaint, L.A.R. was visibly shaken and told police that she was a cross-country truck driver and that Brayson lived with her in the truck.

¶4 On August 26, 2015, Brayson pled guilty to two amended counts of misdemeanor battery. The domestic abuse modifier was added to each count pursuant to WIS. STAT. § 968.075(1)(a). Brayson denied engaging in any of the behavior giving rise to the sexual assault charges, but admitted to the facts in the complaint giving rise to the misdemeanor battery charges.

¶5 At the sentencing hearing, the circuit court explored the nature of the relationship between Brayson and L.A.R. for the purposes of determining whether the domestic violence penalty enhancer applied to the facts of the case. The State told the circuit court that L.A.R. was an “over-the-road truck driver” and that “the cab was her home and Mr. Brayson was on her route with her and apparently had been. The two of them had been together as she reports for a period of time.” The court and the attorneys then engaged in the following colloquy:

[The Court]: And so in terms of meeting the statutory prerequisites for the domestic violence surcharge, do they have any children in common?

[State]: They do not have any children in common. They were boyfriend and girlfriend. They were residing in her cab.

[The Court]: Is that where she lived when she was working?

[State]: So my understanding is she did keep a residence in a state down south but she was on the road

most of the year so that was what she told me she considered her home.

[The Court]: And do you know did she stay in hotels or did she pretty much sleep on the truck?

[State]: My understanding was that this cab was equipped for sleeping in the cab because she was over-the-road.

¶6 Defense counsel told the court that Brayson and L.A.R. had been a couple for “a number of years” but that the two maintain separate addresses in Mississippi. Counsel confirmed, however, that Brayson travels with L.A.R. when she has to go “on the road for her job.” The court found that the relationship “fits under the domestic violence statute.” Accordingly, the court imposed a \$100 domestic abuse surcharge for each battery count.

¶7 Brayson filed a postconviction motion requesting the circuit court vacate the domestic abuse surcharges and strike the domestic abuse modifiers from the judgment of conviction. Brayson argued that he did not reside with L.A.R. within the meaning of WIS. STAT. §§ 968.075(1)(a) and 973.055(a).

¶8 The circuit court denied Brayson’s motion. This appeal follows.

DISCUSSION

¶9 On appeal, Brayson argues that the circuit court should: (1) strike the domestic abuse modifiers from his misdemeanor battery convictions; and (2) vacate the domestic abuse surcharges. Brayson argues that the record does not support a factual basis for the circuit court to conclude that he and L.A.R. had a qualifying relationship for either the domestic abuse modifier pursuant to WIS. STAT. § 968.075(1)(a), or the domestic abuse surcharges pursuant to WIS. STAT. § 973.055. We disagree.

¶10 “Domestic abuse” is not a standalone crime but, rather, a modifier that can be attached to other offenses. Whether an offense qualifies as “domestic abuse” within the meaning of WIS. STAT. § 968.075(1)(a) is a mixed question of fact and law. *See State v. Schmidt*, 2004 WI App 235, ¶13, 277 Wis. 2d 561, 691 N.W.2d 379. This court applies a “clearly erroneous” standard of review to a circuit court’s factual findings. *See id.* Here, Brayson admitted to the facts of the complaint as they pertained to the battery charges. Whether those undisputed facts qualify as “domestic abuse” under § 968.075(1)(a) is therefore a legal question subject to our independent review. *See Schmidt*, 277 Wis. 2d 561, ¶13.

¶11 WISCONSIN STAT. § 968.075 sets forth the definition of domestic abuse as follows:

(1) DEFINITIONS. In this section:

(a) “Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225(1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

¶12 The imposition of a domestic abuse surcharge is governed by WIS. STAT. § 973.055. That section provides, in relevant part:

(1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse surcharge under ch. 814 of \$100 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in ... [WIS. STAT. §] 940.19 ... ; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child[.]

¶13 Again, the interpretation of a statute and its application to found facts are questions of law that this court decides *de novo*. See **Barron Elec. Coop. v. PSC**, 212 Wis. 2d 752, 760, 569 N.W.2d 726 (Ct. App. 1997). However, we will not reverse a circuit court’s factual finding unless it is clearly erroneous. See **Bray v. Gateway Ins. Co.**, 2010 WI App 22, ¶11, 323 Wis. 2d 421, 779 N.W.2d 695.

¶14 It is undisputed that Brayson and L.A.R. were never married and did not share a child in common. The heart of Brayson’s argument is that he and L.A.R. did not “reside” together for the purpose of the domestic abuse statute and surcharges. In its postconviction decision, the circuit court noted that while neither WIS. STAT. §§ 968.075(1) nor 973.055(1) provides a definition of “residence,” there is no indication that the legislature intended to restrict the application of the statutes to only those parties who share a “permanent, fixed habitation.” The court relied on the definition of “residence” as provided by BLACK’S LAW DICTIONARY: “Place where one actually lives or has his home; a person’s dwelling place or place of habitation; an abode; house where one’s home is; a dwelling house; Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently.” See *Residence*, BLACK’S LAW DICTIONARY (abridged 6th

ed. 1991). Using this definition, the circuit court found that Brayson and L.A.R. resided together for purposes of the statutes.

¶15 We agree with the circuit court that the facts of this case establish that the parties resided together for the purposes of assessing the relevant statutes. Both BLACK’S LAW DICTIONARY and the more common WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE provide sufficient guidance. See *State v. Woods*, 117 Wis. 2d 701, 735, 345 N.W.2d 457 (1984) (“The common and approved usage of a word in a statute may be ascertained by reference to a recognized dictionary.”). According to WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (unabr. 1993), the term “reside” means “to dwell permanently or continuously,” “have a settled abode for a time,” or “have one’s residence or domicile.” During the plea colloquy, Brayson acknowledged that the facts contained in the complaint were true and correct, the parties agreed that the complaint would constitute the factual basis for the pleas, and the court stated that it would rely upon the facts in the complaint. The complaint indicates that Brayson “lived with” L.A.R. while she was on the road. During the court’s colloquy with the parties, the court established that while the parties maintained separate residences in Mississippi, they both lived in the truck that L.A.R. drove for most of the year. Indeed, the truck was equipped with a sleeping area and acted as the parties’ residence while L.A.R. was on the job. The court also established that Brayson bought the truck. In his statement to the court, Brayson even referred to L.A.R. as his fiancé. It is sufficient that L.A.R. used the truck as her residence during her periods of work and that Brayson resided with her during those periods. Neither the statutes nor the dictionary definitions require parties to maintain one residence for any particular period of time or even to remain in one place continuously. Accordingly, we affirm the circuit court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)4.

